Chipper Express, Inc. *and* International Brotherhood of Teamsters, Local 179, AFL–CIO, International Brotherhood of Teamsters, Local 330, AFL–CIO, and International Brotherhood of Teamsters, Local 673, AFL–CIO. Case 13–CA–41555–1

September 15, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS WALSH AND MEISBURG

On July 16, 2004, Administrative Law Judge William G. Kocol issued the attached decision. The Respondent filed an exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and adopt the recommended Order as modified.[2]

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Drywall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We correct the judge's inadvertent statement that the Respondent leases drivers to other businesses, including joint employer Transport Production Systems, when in fact it is Transport Production Systems that leases drivers to other companies. We also correct the judge's statement that on July 25, 2003, the Respondent's agent, William Carpenter, presented the Union's representatives with a draft memorandum of agreement, when Carpenter actually presented the Unions with a sample agreement drafted between another company and another union.

[2] The Respondent contends that William Carpenter, the vice president of Transportation Production Systems, lacked authority to bind the Respondent to a collective-bargaining agreement. Therefore, the Respondent contends it did not violate the Act when it refused to sign the agreement that Carpenter had negotiated with the Union. We find that argument unpersuasive.

Of course, if Carpenter had authority to bind the Respondent, there is no question but that the Respondent's refusal to execute the agreement Carpenter had negotiated on its behalf violated the Act. But even if Carpenter lacked that authority, we nevertheless reach the same result. Whatever experiences Donald Schimak, the Respondent's vice president, previously had with unions, he could not reserve the right to operate without a signed collective-bargaining agreement. Yet his statement to the Union that he would not sign the agreement because he would not sign anything amounted to just such a claim. Accordingly, we find that the Respondent's failure to execute the agreement violated Sec. 8(a)(5) and (1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Chipper Express, Inc., Orland Park, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(c).

"Sign and return to the Regional Director sufficient copies of the notice for posting by Transport Production Systems, if willing, at all places where Notices to employees are customarily posted."

Dated, Washington, D.C. September 15, 2004

Robert J. Battista,	Chairman
Dennis P. Walsh,	Member
Ronald E. Meisburg,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Colleen Carol, Esq., for the General Counsel.
Harry J. Secaras (Neal, Gerber & Eisenberg), of Chicago, Illinois, for the Respondent.
John J. Toomey, Esq. (Arnold & Kadjan), of Chicago, Illinois, for the Union.

DECISION

STATEMENT OF THE CASE

WILLIAM G. KOCOL, Administrative Law Judge. This case was tried in Chicago, Illinois, on June 10, 2004. The charge and first amended charge were filed on December 9, 2003,[1] and March 3, 2004, respectively, by International Brotherhood of Teamsters, Local 179, AFL–CIO; International Brotherhood of Teamsters, Local 330, AFL–CIO; and International Brotherhood of Teamsters, Local 673, AFL–CIO (the Union). The complaint, issued on March 5, 2004, alleges that Chipper Express, Inc. (Respondent) violated Section 8(a)(5) and (1) of the Act by refusing to sign a collective-bargaining agreement that it had negotiated with the Union. Respondent filed a timely answer that admitted the allegations in the complaint concerning the filing and service of the charge and amended charge, jurisdiction, labor organization status, the supervisory and agency status of Patricia Schimak, its president, Donald Schimak, its vice president, and that it authorized William Carpenter to negotiate a collective-bargaining agreement on its behalf. Respondent also admitted that the Regional Director for Region 13 issued a Decision and Direction of Election in Case 13–RC–

[1] All dates are in 2003 unless otherwise indicated.

20939 that concluded that Respondent and Transport Production Systems, Inc. (TPS) were joint employers of certain employers, that the group of Respondent's employees described in the complaint was an appropriate unit, that the Union was certified as the collective-bargaining representative of those employees, and that since the certification the Union has been the 9(a) representative of those employees. Respondent denied that it had reached full agreement with the Union on a collective-bargaining agreement, that the Union requested it to sign the agreed-upon contract, and that it failed and refused to sign that agreement.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, is engaged in the trucking business with several facilities located in the State of Illinois, where it annually performs services valued in excess of $50,000 in States other than the State of Illinois. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

As indicated, Respondent is engaged in the trucking business. It leases truckdrivers to other businesses, including TPS. As also mentioned above, the Regional Director concluded that Respondent and TPS were joint employers. TPS is a logistic, leasing, and counseling company; it leases drivers from Respondent. Respondent did not appeal the Regional Director's ruling and does not challenge that fact in this proceeding that it and TPS are joint employers for the unit employees. I, therefore, also conclude that Respondent and TPS are joint employers.

After the certification, the Union sent a letter on May 6 to Respondent and TPS requesting bargaining for a contract. William Carpenter, Respondent's admitted agent for collective-bargaining purposes and who also represented TPS, responded to the letter and arrangements were made to begin bargaining. The first of six bargaining sessions began on June 27. Mark Wiechmann, among others, represented the Union. When Wiechmann asked who represented Respondent at that negotiation session Carpenter explained he represented Respondent in labor relations matters but that Respondent did not want to directly sign a collective-bargaining agreement but that it could possibly sign a memorandum of agreement tying Respondent to that agreement as another business had done with another labor organization. Wiechmann answered that the Union would review the matter with its attorney and if the language was acceptable and the attorney agreed then Carpenter's approach would be acceptable. The parties then began bargaining and progress was made. At the next meeting on July 25, Carpenter presented the Union with the proposed memorandum of agreement. The Union rejected it because it did not tie Respondent to the contract as if Respondent had directly signed the contract itself. The parties agreed to attempt to modify the language to achieve that purpose and they resumed bargaining on other matters and more progress was made. On August 8, the parties exchanged written drafts of the memorandum of agreement. Carpenter complained that the Union's proposal was too lengthy and had unnecessary language. The Union agreed to redraft the proposal to make it as short as possible and yet achieve its purpose. The parties continued reaching agreements on the terms of the new contract. At the August 15 meeting, the Union produced its revised and shortened memorandum of agreement and Carpenter agreed to that language. That memorandum pointed out that the Union and TPS had reached agreement on a collective-bargaining agreement and it described the appropriate unit. It further provided:

> Whereas, Chipper Express, Inc. has authorized Transport Production System, Inc. to implement and administer the CBA; and Whereas, Chipper Express, Inc., Transport Production System, Inc., and Union desire to memorialize their understanding and agreement as to Chipper Express, Inc.'s and Transport Production System, Inc.'s obligations under the CBA; and Now, therefore, the parties hereby agree as follows:
>
> 1. Transport Production System, Inc. shall execute the CBA immediately upon execution of this Agreement.
>
> 2. Chipper Express, Inc. and Transport Production System, Inc. acknowledge that they are a "joint employer" and shall be jointly and severally liable for any breach of the CBA.
>
> 3. In the event that Chipper Express, Inc. and Transport Production System, Inc. terminate their relationship, they shall be responsible to continue the terms and conditions contained therein or to require that any successor assume the Chipper Express, Inc. and Transport Production System, Inc. obligations under the CBA and this Agreement.

Wiechmann asked Carpenter to have Respondent provide something in writing indicating that upon ratification of the contract Respondent would sign the memorandum. Carpenter indicated that he would talk to Respondent and take care of that matter. Other contractual matters were discussed at this meeting. At the next meeting on September 4 Carpenter revealed that he had not been able to get Respondent to sign anything and Wiechmann reiterated that the Union needed something in writing from Respondent. The parties continued bargaining; by this time they had agreed to about 90 percent of the terms of the collective-bargaining agreement. At September 22 meeting the parties resolved the final outstanding matters and reached full agreement on the terms of the collective-bargaining agreement. The lead paragraph in the agreement provides:

> This Agreement is made and entered into by and between Transport Production Systems, Inc. . . . and Locals 179, 330, and 673 of the International Brotherhood of Teamsters. . . . The "Memorandum of Agreement and Understanding" between "Chipper Express, Inc." and "Transport Production Systems, Inc.," and the "Union," does become an integral part of this Agreement.

Otherwise the agreement referred to TPS as the employer. But at this meeting Carpenter also announced that Respondent would not sign anything. Carpenter presented the Union with the document he had asked Respondent to sign. It read:

> This will serve as assurance that Chipper Express, Inc. will sign a letter of understanding regarding the union contract with Locals 179, 330, and 673, once it has been approved and ratified.

Carpenter explained that Respondent's vice president, Donald Schimak, was unwilling to sign anything after he had legal problems with another business that owned. The Union decided to proceed with the ratification of the contract with TPS and filed unfair labor practice charges against Respondent. Thereafter, the contract was ratified by the employees and then signed by Carpenter for TPS. The contract has been applied to the unit employees. During bargaining for the contract, Carpenter frequently consulted with Schimak before tentatively agreeing to proposals made by the Union.

On October 18 Wiechmann called Schimak. Among other things, Wiechmann asked Schimak who he should contact if the Union had problems with TPS' contract compliance; Schimak replied that the Union should contact him directly. Wiechmann expressed his concern that Respondent might divert work from the unit employees and Schimak assured him that Respondent would not do so. But Schimak also told Wiechmann that he would not sign anything. On December 1, Wiechman sent Respondent a letter requesting that it sign the memorandum of agreement but the Union received no response.[2]

As indicated above, Respondent admits that Carpenter was its agent for collective-bargaining purposes. More specifically, in its answer Respondent stated: "Respondent admits that William Carpenter was an agent of Respondent within the meaning of Section 2(13) of the Act during all times relevant to this case." Furthermore, in its answer Respondent admitted the allegation that "since on or about June 27, 2003, Respondent has authorized William Carpenter to negotiate a collective-bargaining agreement on its behalf." As such, Respondent is bound by the decisions and agreements made by him. *Michael J. Bollinger Co.*, 252 NLRB 406 (1980). It is also clear that on August 15 Carpenter and the Union reached full agreement on the memorandum of understanding that Respondent was to sign and that on September 22 Carpenter and the Union reached full and complete agreement on the terms of the underlying collective-bargaining agreement. Under these circumstances it is well settled that Respondent was obligated to sign the memorandum of agreement. *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941).

In its brief, Respondent argues that the General Counsel failed to prove that Carpenter had unlimited authority to represent Respondent in negotiations. Not surprisingly, Respondent's brief makes no mention of the admissions made in its answer and set forth above. Those admissions are binding on Respondent and, thus, there was no need for the General Counsel to prove Carpenter's agency status. Moreover, the evidence in this record as set forth above fully supports Respondent's admissions that Carpenter was its agent for purposes of bargaining a contract with the Union.

In a slightly different variation of the same argument, Respondent contends that neither the Union nor Respondent intended that memorandum of agreement serve as a contract. Respondent argues that this lack of a "meeting of the mind" came about as a result of Carpenter's limited authority and that Schimak himself had not agreed to sign the memorandum of agreement. But I have concluded that Carpenter had full authority to bargain on Respondent's behalf and that he reached full agreement on the terms of the memorandum. Once this was done Respondent was bound to sign the memorandum as a matter of law.

CONCLUSION OF LAW

By failing to sign the memorandum of agreement and understanding, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall also require it to sign the memorandum of agreement and understanding that it agreed to on August 15.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Chipper Express, Inc., Orland Park, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to sign the memorandum of agreement and understanding it reached in bargaining with the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Sign the memorandum of agreement and understanding it reached in bargaining with the Union.

(b) Within 14 days after service by the Region, post at its facilities in the State of Illinois copies of the attached Notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by

[2] The foregoing facts are based on the documentary evidence and Wiechmann's credible testimony. Respondent did not present witnesses at the hearing.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 22, 2003.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by Chipper Express, Inc. if willing, at all places where Notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 16, 2004

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to sign agreements that we have reached with the International Brotherhood of Teamsters, Local 179, AFL–CIO; International Brotherhood of Teamsters, Local 330, AFL–CIO; and International Brotherhood of Teamsters, and Local 673, AFL–CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL sign the memorandum of agreement and understanding we reached in bargaining with the Union.

CHIPPER EXPRESS, INC.